

2010

City of Orem v. Scott Ray Bishop : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

City of Orem,)	
)	
Plaintiff and Appellee,)	
vs.)	
Scott Ray Bishop,)	Case #20100962
)	
Defendant and Appellant)	

BRIEF OF APPELLANT

APPEAL FROM THE FOURTH DISTRICT COURT, SPANISH FORK,
STATE OF UTAH, FROM A CONVICTION OF SPEEDING,
INFRACTION BEFORE THE HONORABLE JUDGE EYRE

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BRIEF OF APPELLANT

JURISDICTION OF THE UTAH COURT OF APPEALS

This court has appellate jurisdiction in this matter pursuant to the provisions of Utah Code Annotated §78A-4-103(2)(e).

ISSUES PRESENTED AND STANDARDS OF REVIEW

Appellant challenges the trial court's guilty verdict, arguing that the trial court admitted testimony, against Appellant's objections, from a witness the trial court deemed unqualified and unable to testify, the trial court refused to permit relevant evidence, the trial court failed to apply Utah Rules of Evidence, Utah Code Annotated, and Utah Supreme Court decisions, and the trial court failed to uphold Appellee's burden of proof beyond a reasonable doubt, and that these failures constituted irreversible error in direct harm to Appellant.

Correction-of-Error Standard. See Trujillo v. Jenkins, 840 P.2d 777, 778-79 (Utah 1992); State v. Richardson, 843 P.2d 517, 518 (Utah Ct. App. 1992) ("[W]e consider the trial court's interpretation of binding case law as presenting a question of law and review the trial court's interpretation of that law for correctness."); See State v. Galli, 967 P.2d 930, 933

(Utah 1998); State v. Harley, 371 Utah Adv. Rep. 17, 18 (Utah Ct. App. 1999).

"Controlling Utah case law teaches that 'correctness' means the appellate court decides the matter for itself and does not defer in any degree to the trial judge's determination of law." Pena, 869 P.2d at 936; see State v. Maguire, 975 P.2d 476, 478 (Utah Ct. App. 1999)

CONTROLLING STATUTORY PROVISIONS

All controlling statutory provisions are set forth in full in the Addenda.

STATEMENT OF THE CASE

On August 31, 2010, Appellant was charged by citation filed in Fourth District Court with Speeding, a Class C Misdemeanor, in violation of Utah Code Annotated § 41-6a-601.

On September 8, 2010, Appellant appeared before the court clerk, pled not guilty to the charge, and posted bail in the amount of \$90.00.

On September 27, 2010, Appellant filed a Notice of Demand for Jury Trial.

On October 26, 2010, the Appellee changed the charge from a Class C Misdemeanor to an Infraction, and a bench trial was held.

At trial, Appellant was found guilty and was ordered to pay a fine in the amount of \$90.00. Judge Eyre ordered Appellant's previously posted bail, in the same amount, to be forfeited as payment-in-full of the fine.

On November 24, 2010, Appellant filed a Notice of Appeal in Fourth District Court.

STATEMENT OF FACTS

A. Testimony of Corporal Scott Rich

On examination of Corporal Rich, the following were entered into the record.

Corporal Rich testified that, on August 27, 2010, he was running Lidar, a device used to measure the speed of a moving vehicle, at approximately 200 South 400 East (Orem High School) in Orem, Utah.

Corporal Rich testified that, at approximately 5:15p.m., a vehicle, described as an Acura SUV, travelling North on 400 East, approached his position, that he made a visual estimate of the vehicle's speed to be approximately 10-15 miles per hour over the posted 25mph limit, and checked the vehicle's speed with the Lidar unit, which registered a speed of 40mph, for a total of 15mph over the speed limit.

Corporal Rich testified that, in making the traffic stop, "the vehicle passed me; I pulled out of the driveway, turned on my overhead lights at which point the vehicle pulled over, and I made contact with the driver of the vehicle." Corporal Rich subsequently identified Appellant as the driver of the vehicle to which he was referring. Appellant objected on the grounds that testifying to such called "for a legal conclusion." When Judge Eyre questioned Appellant as to what the legal conclusion was, Appellant responded "the terms 'driver' and 'vehicle' are legally defined terms" to which Judge Eyre responded "they are everyday usage. I overrule the objection."

Corporal Rich testified that he then issued a citation to the driver for Speeding.

On cross-examination of Corporal Rich, the following statements were entered into the record.

Appellant to Corporal Rich: "On the citation that you issued, is there any place on there that would indicate an accident, an injury, a harm, anything like that?"

Corporal Rich: "Yeah, there is a box you check if there was an accident that took place."

Appellant: "And, did you indicate that there was or was not an accident?"

Corporal Rich: "No indication for an accident, no."

Appellant: "Was there any accident?"

Corporal Rich: "No."

Appellant: "Was there any injury?"

Corporal Rich: "No."

Appellant: "Any harm to anyone?"

Corporal Rich: "No."

Appellant: "So, no loss whatsoever?"

Corporal Rich: "No loss as far as...?"

Appellant: "No loss as far as the offense that I've been charged with."

Appellee to Judge Eyre: "Your Honor, I'm going to object to this line of questioning. It doesn't go to whether or not he was speeding. It goes to whether or not there was an accident, which is irrelevant."

Judge Eyre to Appellant: "What do you claim for it, Mr. Bishop?"

Appellant proceeded to cite and quote from State v. Mauchley, 67 P.3d 477, 482 (Utah 2003), regarding the minimum requirements to prosecute a criminal case (i.e. the injury or harm specified in the crime occurred, and this injury or harm was caused by someone's criminal activity).

Judge Eyre: "Well, there are clearly victimless crimes, and Speeding is one of them."

Appellant: "I've found nothing in this ruling to indicate that, Your Honor."

Judge Eyre: "Well, proceed. You can make that argument at the conclusion of the case."

Appellant to Corporal Rich: "So, Officer Rich, you did file this ticket, citation?"

Corporal Rich: "I did."

Appellant: "Is everything on this ticket true and accurate?"

Corporal Rich: "Correct."

Appellant: "Does the ticket present a valid cause of action?"

Appellee to Judge Eyre: "Your Honor that calls for a legal conclusion."

Appellant to Judge Eyre: "Your Honor, he has been able to answer things that require legal conclusions in prior testimony."

Appellee: "Your Honor, asking an Officer whether or not a citation presents a valid cause of action in a criminal setting would be..."

Judge Eyre: "I sustain the objection. It's not relevant to the court's determination."

Appellant to Corporal Rich: "Does this ticket present every element of a crime having occurred?"

Corporal Rich: "The ticket is issued for a Speeding citation, which was the Infraction that I observed at the time."

Appellant: "Is Speeding a crime?"

Corporal Rich: "It is."

Appellant: "Is an Infraction a crime?"

Corporal Rich: "It is."

Appellant: "So, you are testifying that a crime occurred?"

Corporal Rich: "Correct."

Appellant: "Is it your testimony that in this case there is a valid cause of action?"

Corporal Rich: "There is a valid cause of action, yes."

Appellant: "Are you aware, Officer Rich, that the U.S. Supreme Court has ruled that for a valid cause of action to exist the injury alleged must be, for example, distinct and palpable and not abstract or conjectural or hypothetical...?"

Appellee to Judge Eyre: "Your Honor, I'm going to object to the question's relevancy."

Judge Eyre: "Sustained."

Appellant to Judge Eyre: "Your Honor, he said that a crime occurred. He said that there was a valid cause of action. I'm simply asking if his..."

Judge Eyre: "Those other follow-up questions were asking him to give an opinion as to a U.S. Supreme Court case, I presume. Clearly it's not in the purview of a Police Officer. Those are considerations for the court to determine, and you can make whatever legal arguments you want to the court. This witness is here to give information with respect to the facts of the case, not the legal issues."

Appellant to Corporal Rich: "Officer Rich, where on this ticket is a distinct and palpable injury presented?"

Corporal Rich: "There isn't one."

Appellant: "Does this ticket present a justiciable case or controversy?"

Appellee to Judge Eyre: “Your Honor, I’m going to object again to this line of questioning. It’s not relevant. He’s asking for a legal conclusion or legal opinions in the case.”

Judge Eyre: “Sustained.”

Appellant to Corporal Rich: “Officer Rich, have I been accused of violating someone’s rights?”

Corporal Rich: “No.”

Appellant: “So, this case does not involve the alleged violation of a legal right?”

Corporal Rich: “Correct.”

Appellant: “How does someone acquire standing in a court case?”

Appellee to Judge Eyre: “Objection. Same issue as before.”

Judge Eyre: “Sustained. This is not the purview of this particular witness, asking for a legal conclusion.”

B. Appellee’s Summation

Appellee stated in his summation “The offense of Speeding is the injury. It is a general public issue. It would be the injury to the general public, not to a specific individual thus giving rise for standing to the city to raise such a claim.”

C. Appellant’s Summation

Appellant stated in his summation “The Utah Supreme Court in State v. Mauchley stated ‘Generally, to establish guilt in a criminal case, the prosecution must show that [1] the injury or harm specified in the crime occurred, [2] this injury or harm was caused by someone’s criminal activity.’ [The witness] has testified that both foundations of a crime were not committed, that there was no injury, loss, or harm, to either himself or the City

of Orem, that there was no violation of a legal right or duty either to himself or to the City of Orem.”

Appellant continued, quoting State v. Mauchley, supra, “‘Under the trustworthiness standard, the state must still establish all elements of the offense, however, the elements may be established by independent evidence of the crime, a corroborated confession, or a combination of both.’ There is no corroborated confession in this case, Your Honor, and there is no independent evidence of a crime.” Judge Eyre responded “There is independent... There is independent evidence. That’s what the officer testified to, that he observed a crime, and that crime... um... Speeding ordinances and Speeding statutes have been upheld routinely by our Supreme Court and our Court of Appeals. I don’t see any relevance of that case to these issues here.”

D. Appellee’s Further Comments

When asked by Judge Eyre if he had any further comments, Appellee stated “It is a General Welfare issue within the powers of the city and the state.”

SUMMARY OF ARGUMENT

For the trial court to convict Appellant on the charge of Speeding, the trial court must find the Appellant guilty “beyond a reasonable doubt” based upon the evidence before it and in accordance with rules of the court, Utah Code Annotated, and precedents set by the Utah Supreme Court and Utah Court of Appeals. This the trial court did not do.

Upon cross-examination, Appellee’s only witness in the case was declared by both Appellee and Judge Eyre, multiple times throughout the trial, unable to provide legal conclusions and legal opinions, yet this same witness was allowed by the court to provide

legal conclusions for Appellee, in contradiction to Appellant's objections, a clear violation of fairness, justice and due process of law.

If Appellee's only witness was not allowed to provide testimony regarding legal conclusions that would serve to provide a defense for Appellant, the testimony, in regards to all legal conclusions made by the witness, should have been stricken. This would, of course, include the citation, which included the initial legal conclusions made by the witness, without which Appellee could not have prevailed, leaving the court no choice but to find the Appellant not guilty.

Furthermore, if Appellee's only witness were allowed to provide legal conclusions for Appellee, the trial court should have allowed questions by Appellant that could substantiate the credibility, substance, and sufficiency, or the lack thereof, of the complaint. This the trial court did not do to the harm of Appellant.

Additionally, the trial court failed to correctly apply State v. Mauchley, supra, absent any citations to any opposing case law, to the case at hand, a failure which, if remedied, would also have left the trial court no choice but to find the Appellant not guilty.

Finally, Appellee failed to produce any evidence to show that Appellant had committed the crime of Speeding.

Any or each of these elements would give rise to a question as to the validity of a finding of guilty by the trial court, and each is irreversible error on the part of the trial court causing harm to Appellant.

ARGUMENT

According to Utah Rules of Evidence, Rule 602, a witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter.

According to Utah Rules of Evidence, Rule 401 and 402, all evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence, is admissible.

According to the Utah Supreme Court, as stated in State v. Mauchley, supra, “[t]o establish guilt’ in a criminal case, “the prosecution [must] show that [1] the injury or harm specified in the crime occurred, [2] this injury or harm was caused by someone’s criminal activity[.]”

According to Utah Code Annotated § 41-6a-601, to prove that a vehicle was Speeding, Appellee must provide evidence that the vehicle was traveling at a rate of speed greater than is reasonable and prudent under the existing conditions, giving regard to the actual and potential hazards then existing, providing that a travel of speed greater than certain posted speed limits is prima facie evidence of Speeding (and therefore rebuttable), and that a gubernatorial proclamation in times of war or emergency may change the speeds which are considered prima facie evidence of traveling at a rate of speed that is unreasonable or imprudent under the existing conditions.

Appellant challenges his conviction based upon [1] the improper admission of testimony by a witness who was ruled by the trial court several times to be unqualified and unable to testify, [2] the refusal by the trial court to permit Appellant to attack the sufficiency of the complaint, [3] the failure of the trial court to apply cited Utah Supreme

Court decision, absent any cited opposing decisions, and [4] the failure of the trial court to uphold Appellee's burden of proof beyond a reasonable doubt.

POINT I

The trial court should have stricken or vacated any testimony produced by Corporal Rich because the court ruled him unable to testify.

The citation provided by Corporal Rich to Appellant states certain facts, such as a description of Appellant, the direction of travel, the date, time and location of the traffic stop, etc. Corporal Rich's qualifications to determine these facts are not in dispute.

However, in addition to these facts, Corporal Rich included his personal legal conclusions on the citation. These legal conclusions included Corporal Rich's legal opinion that Appellant was 'driving' a 'vehicle' and had committed the crime of 'Speeding.'

Further, upon examination before the court, Corporal Rich concluded that Appellant was the 'driver' of the 'vehicle' and had committed the crime of 'Speeding'.

The term 'driver' is defined at Utah Code Annotated § 53-3-102(34).

The term 'vehicle' is defined at Utah Code Annotated § 41-6a-102(72).

The crime of 'Speeding' is defined at Utah Code Annotated § 41-6a-601(1).

Appellant objected to these characterizations based upon the fact that Appellee had introduced no evidence that Corporal Rich was qualified to make these legal conclusions. Judge Eyre overruled these objections. No qualifications were ever entered into the record that Corporal Rich was qualified to make such legal conclusions, and, to the contrary, when Appellant cross-examined Corporal Rich about these and similar matters, Appellee objected to Appellant's lines of questioning based on the fact that the

questions called for legal conclusions. Judge Eyre sustained Appellee's objections each time and specifically stated several times that Corporal Rich was in court to testify to the facts and not to answer questions which would require legal conclusions.

Judge Eyre erred by testifying for Appellee that the usage for these terms "are everyday usage." Utah Rules of Evidence, Rule 605 states "The judge presiding at the trial may not testify in that trial as a witness. No objection need be made in order to preserve the point."

Utah Rules of Criminal Procedure, Rule 4(h) states that "Words and phrases used are to be construed according to their usual meaning unless they are otherwise defined by law or have acquired a legal meaning." As these terms are each defined by Utah statute, their usage must be according to their statutorily-defined meaning and not their 'usual meaning.'

Utah Rules of Evidence, Rule 602 states "A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This rule is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses."

All testimony of Corporal Rich that included legal conclusions, which he, according to both Appellee and Judge Eyre, was unable or unqualified to make, should have been stricken or vacated from the record and thus not considered by the trial court in its decision. This is not within the discretion of the trial court.

Without Corporal Rich's testimony as a witness, both on the citation and on the witness stand, Appellee would have no witness to the alleged crime and the trial court

could not have found Appellant guilty 'beyond a reasonable doubt' as it would have had no evidence before it whatsoever.

The trial court's admission of Corporal Rich's legal conclusions was a violation of Appellant's right to due process, and the conviction should be reversed.

POINT II

The refusal to permit Appellant to attack the sufficiency of the complaint was a denial of due process.

"The fundamental requisite of due process of law is the opportunity to be heard." *Grannis v. Ordean*, 234 U.S. 385, 234 U.S. 394 (1914). The hearing must be "at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 380 U.S. 552 (1965)." *Goldberg v. Kelly*, 397 U.S. 254, 268 (1970).

"Rule 401 of the Utah Rules of Evidence defines relevant evidence as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Utah R. Evid. 401 (emphasis added). In other words, [e]vidence that has even the slightest probative value is relevant under the definition in rule 401. Edward L. Kimball & Ronald N. Boyce, Utah Evidence Law 4-2 (1996); see also Edward L. Kimball & Ronald N. Boyce, Utah Rules of Evidence, 1985 Utah L. Rev. 63, 79 (stating that the general standard for [relevancy] is 'any' probative value)." *State v. Jaeger*, 973 P. 2d 404.

Utah Rules of Evidence, Rule 401 states "'Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."

Utah Rules of Evidence, Rule 402 states “All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States or the Constitution of the state of Utah, statute, or by these rules, or by other rules applicable in courts of this state. Evidence which is not relevant is not admissible.”

“The requirement of standing, however, has a core component derived directly from the Constitution. *A plaintiff must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct* and likely to be redressed by the requested relief.” Allen v. Wright, 468 U.S. 737, 751 (1984).

“[S]tanding is perhaps the most important of [the jurisdictional] doctrines... standing represents a jurisdictional requirement which remains open to review at all stages of the litigation...” NOW, Inc. v. Scheidler, 510 US 249

Whether or not a valid cause of action was before the trial court, whether or not that cause of action was justiciable, and whether or not there was standing to bring this case, were valid lines of questioning for Corporal Rich, who was Appellee’s only witness and the individual responsible for bringing the cause of action to the trial court for adjudication.

The trial court’s refusal to permit Appellant to attack the sufficiency of the complaint was a violation of Appellant’s right to due process, and the conviction should be reversed.

POINT III

Absent any citations in opposition to Appellant’s defense, the trial court failed to apply cited Utah Supreme Court precedent.

In State v. Mauchley, supra, a criminal case, the Utah Supreme Court changed the corroboration rule from the Corpus Delicti Rule to the Trustworthiness Standard. In discussing the previously-used Corpus Delicti Rule, the Court stated:

Quotes Begin

¶15 The corroboration rule is most “often termed the ‘corpus delicti’ rule because the orthodox version of the rule requires corroboration of the corpus delicti, or body of the crime.” [cites removed]. Here, the term “corpus delicti” means “evidence that the [charged] crime was committed.” [cites removed]. Therefore, corroboration of the corpus delicti means to produce corroborative “evidence that the specified offense occurred.” [cites removed].

¶16 Generally, “[t]o establish guilt” in a criminal case, “the prosecution [must] show that [1] the injury or harm specified in the crime occurred, [2] this injury or harm was caused by someone’s criminal activity, and [3] the defendant was the [perpetrator].” [cites removed]. The corpus delicti, or body of the crime, involves only the first two elements, however. Id. Hence, when the corpus delicti rule requires corroboration of the corpus delicti, it requires only corroboration that a harm or injury occurred by criminal act. [rest of paragraph removed].

¶17 For example, in a homicide case, the State must produce evidence that a person died and that the death was caused by a criminal act in order to establish that an injury or harm occurred by criminal means. [cites removed]. Once it produces such evidence, however, the State may then introduce a defendant’s confession to establish other elements of the crime, such as intent or malice. [cites removed].

Quotes End

In these few paragraphs, the Court clearly described the difference between the “corpus delicti” and the “corpus delicti rule;” the difference being the actual body of the crime in contrast to corroboration of the crime having occurred, usually by confession of the defendant. In paragraph 16, the Court gave the general description of the most basic elements of a crime that the prosecution must prove in any criminal case, though, of course, each crime may have further elements necessary to prove in order to gain a conviction.

Continuing, the Court proceeded to describe the new corroboration standard to be used, known as the Trustworthiness Standard, stating:

Quotes Begin

¶19 [...] Unlike the orthodox version of the corroboration rule, the new version focuses on the confession itself. [cites removed]. Specifically, “the adequacy of corroborating [evidence] is measured not by its tendency to establish the corpus delicti but by the extent to which it supports the trustworthiness of the admissions.” [rest of paragraph removed].

¶42 As early as 1909, this court applied the corpus delicti rule to all crimes. Thus, in all criminal trials the State is required to introduce evidence, independent of a defendant’s confession, that a harm or injury occurred by someone’s criminal act. [cites removed]. Since then, however, the classes of crime have become more numerous and “modern statutes tend to define offenses more precisely and in greater detail than traditional case law.” [cites removed]. As a result, defining the corpus delicti, or in other words, defining what the State must show to establish that the charged crime was

committed before a confession may be admitted, [cites removed] has become more difficult and it has made the rule even more unworkable.

¶49 Under the trustworthiness standard, the State must still establish “[a]ll elements of the offense.” [cites removed]. However, the elements may be established by independent evidence of the crime, a corroborated confession, or a combination of both. Id. Thus, the State does not have to provide independent evidence that a harm or injury occurred by criminal act before a confession may be admitted to help establish guilt.

¶51 Substantial independent evidence supporting the trustworthiness of a confession need not necessarily include independent evidence of the crime. In cases such as this one, where there is no evidence of the crime independent of the confession, the State may nevertheless “establish the trustworthiness of the confession with other evidence typically used to bolster the credibility and reliability of an out-of-court-statement.” [cites removed].

Quotes End

In these paragraphs, the Court points out that, where the Corpus Delicti Rule had to follow the establishment that a crime had occurred, the Trustworthiness Standard version of the corroboration rule simply had to evince a level of trustworthiness of the person giving the confession. However, as paragraph 42 points out, the necessity of proving the basic elements that a crime occurred has become more difficult, not less stringent. The court goes further, in paragraph 49, by stating that the State must establish all elements of the offense, yet nowhere did the Court define the elements of any crime to be less than the bare minimum standards produced in paragraph 16, and, though the State “does not have to provide independent evidence that a harm or injury occurred by

criminal act before a confession may be admitted,” it is clear that it must still do so, whether before or after. Finally, in paragraph 51, the Court states that “where there is no evidence of the crime, independent of the confession, the State may nevertheless ‘establish the trustworthiness of the confession,’” thus pointing out, once again, that, as stated in paragraph 49, either independent evidence must exist to substantiate a crime having been committed and/or a confession must exist (“the elements may be established by independent evidence of the crime, a corroborated confession, or a combination of both.”)

There is no confession in evidence, and Corporal Rich testified under oath that there was no injury and there was no violation of a legal right. Thus Corporal Rich, himself, testified that the two most basic elements of a crime were absent in this case.

Neither Appellee nor Judge Eyre cited any case in opposition to State v. Mauchley, supra, to contradict Appellant’s position.

“Component parts of every crime are the occurrence of a specific kind of injury or loss, somebody’s criminality as source of the loss, and the accused’s identity as the doer of the crime; the first two elements are what constitutes the concept of “corpus delicti.” U.S. v. Shunk, 881 F.2d 917, 919 C.A. 10 (Utah).

The trial court’s failure to apply cited Utah Supreme Court decisions, absent any differing citation which Appellant might rebut was a violation of Appellant’s right to due process, and the conviction should be reversed.

POINT IV

The trial court failed to uphold Appellee’s duty to provide evidence proving Appellant guilty beyond a reasonable doubt.

Utah Code Annotated § 41-6a-601 states:

(1) A person may not operate a vehicle at a speed greater than is reasonable and prudent under the existing conditions, giving regard to the actual and potential hazards then existing, including when: (a) approaching and crossing an intersection or railroad grade crossing; (b) approaching and going around a curve; (c) approaching a hill crest; (d) traveling upon any narrow or winding roadway; and (e) approaching other hazards that exist due to pedestrians, other traffic, weather, or highway conditions.

(2) Subject to Subsections (1) and (4) and Sections **41-6a-602** and **41-6a-603**, the following speeds are lawful: (a) 20 miles per hour in a reduced speed school zone as defined in Section **41-6a-303**; (b) 25 miles per hour in any urban district; and (c) 55 miles per hour in other locations.

(3) Except as provided in Section **41-6a-604**, any speed in excess of the limits provided in this section or established under Sections **41-6a-602** and **41-6a-603** is prima facie evidence that the speed is not reasonable or prudent and that it is unlawful.

(4) The governor by proclamation in time of war or emergency may change the speed limits on the highways of the state.

Clause (1) provides that operating a vehicle at a speed greater than is reasonable and prudent under the existing conditions is what constitutes Speeding, while Clause (2) provides for certain rates of speed that are lawful in certain locations, though not stating that other rates of speed are not lawful in other those or other areas, Clause (3) simply states that exceeding certain posted speed limits is prima facie evidence that the speed is not reasonable or prudent, and Clause (4) provides that the governor may change the rates of speed listed as prima facie evidence during certain times or in certain circumstances.

No testimony was given to indicate that the speed of the alleged vehicle was unreasonable or imprudent, as attested to by Corporal Rich in his statements that there was no injury or harm and that no person's legal right had been violated, nor were any of the conditions in sub-clauses 1a-1e, noted in the above paragraphs, in existence on the time and date in question, nor were any of them noted in Corporal Rich's testimony. These facts alone rebut the prima facie evidence of the posted speed limit element.

The trial court's finding of guilty, absent any evidence of the alleged crime of Speeding, was a violation of Appellant's right to due process, and the conviction should be reversed.

CONCLUSION AND PRECISE RELIEF SOUGHT

Appellant asks this Court to reverse his conviction on the charge of Speeding and order Appellant's payment for the fine refunded and returned.



Scott Bishop

Certificate of Service

This is to certify that on this 31st day of JANUARY, 20 11, two (2) true and correct copies of the foregoing Brief of Appellant were hand-delivered X mailed to the Appellee at the following address:

City of Orem, City Attorney
56 North State Street
Orem, UT 84057



Scott Bishop

ADDENDA

UTAH CODE ANNOTATED

Utah Code Annotated § 53-3-102. Definitions.

(10) "Drive" means:

- (a) to operate or be in physical control of a motor vehicle upon a highway; and
- (b) in Subsections **53-3-414**(1) through (3), Subsection **53-3-414**(5), and Sections **53-3-417** and **53-3-418**, the operation or physical control of a motor vehicle at any place within the state.

(11)

- (a) "Driver" means any person who drives, or is in actual physical control of a motor vehicle in any location open to the general public for purposes of vehicular traffic.
- (b) In Part 4, Uniform Commercial Driver License Act, "driver" includes any person who is required to hold a CDL under Part 4 or federal law.

Utah Code Annotated § 41-6a-102. Definitions.

(34)

- (a) "Motor vehicle" means a vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.
- (b) "Motor vehicle" does not include vehicles moved solely by human power, motorized wheelchairs, or an electric personal assistive mobility device.

(72) "Vehicle" means a device in, on, or by which a person or property is or may be transported or drawn on a highway, except devices used exclusively on stationary rails or tracks.

Utah Code Annotated § 41-6a-601. Speed regulations -- Safe and appropriate speeds at certain locations -- Prima facie speed limits -- Emergency power of the governor.

(1) A person may not operate a vehicle at a speed greater than is reasonable and prudent under the existing conditions, giving regard to the actual and potential hazards then existing, including when:

- (a) approaching and crossing an intersection or railroad grade crossing;
- (b) approaching and going around a curve;
- (c) approaching a hill crest;
- (d) traveling upon any narrow or winding roadway; and
- (e) approaching other hazards that exist due to pedestrians, other traffic, weather, or highway conditions.

- (2) Subject to Subsections (1) and (4) and Sections **41-6a-602** and **41-6a-603**, the following speeds are lawful:
- (a) 20 miles per hour in a reduced speed school zone as defined in Section **41-6a-303**;
 - (b) 25 miles per hour in any urban district; and
 - (c) 55 miles per hour in other locations.
- (3) Except as provided in Section **41-6a-604**, any speed in excess of the limits provided in this section or established under Sections **41-6a-602** and **41-6a-603** is prima facie evidence that the speed is not reasonable or prudent and that it is unlawful.
- (4) The governor by proclamation in time of war or emergency may change the speed limits on the highways of the state.

Utah Code Annotated § 78a-4-103. Court of Appeals jurisdiction.

- (1) The Court of Appeals has jurisdiction to issue all extraordinary writs and to issue all writs and process necessary:
- (a) to carry into effect its judgments, orders, and decrees; or
 - (b) in aid of its jurisdiction.
- (2) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:
- (a) the final orders and decrees resulting from formal adjudicative proceedings of state agencies or appeals from the district court review of informal adjudicative proceedings of the agencies, except the Public Service Commission, State Tax Commission, School and Institutional Trust Lands Board of Trustees, Division of Forestry, Fire, and State Lands actions reviewed by the executive director of the Department of Natural Resources, Board of Oil, Gas, and Mining, and the state engineer;
 - (b) appeals from the district court review of:
 - (i) adjudicative proceedings of agencies of political subdivisions of the state or other local agencies; and
 - (ii) a challenge to agency action under Section **63G-3-602**;
 - (c) appeals from the juvenile courts;
 - (d) interlocutory appeals from any court of record in criminal cases, except those involving a charge of a first degree or capital felony;
 - (e) appeals from a court of record in criminal cases, except those involving a conviction or charge of a first degree felony or capital felony;
 - (f) appeals from orders on petitions for extraordinary writs sought by persons who are incarcerated or serving any other criminal sentence, except petitions constituting a challenge to a conviction of or the sentence for a first degree or capital felony;
 - (g) appeals from the orders on petitions for extraordinary writs challenging the

decisions of the Board of Pardons and Parole except in cases involving a first degree or capital felony;

(h) appeals from district court involving domestic relations cases, including, but not limited to, divorce, annulment, property division, child custody, support, parent-time, visitation, adoption, and paternity;

(i) appeals from the Utah Military Court; and

(j) cases transferred to the Court of Appeals from the Supreme Court.

(3) The Court of Appeals upon its own motion only and by the vote of four judges of the court may certify to the Supreme Court for original appellate review and determination any matter over which the Court of Appeals has original appellate jurisdiction.

(4) The Court of Appeals shall comply with the requirements of Title 63G, Chapter 4, Administrative Procedures Act, in its review of agency adjudicative proceedings.

UTAH RULES OF EVIDENCE

Utah Rules of Evidence, Rule 401. Definition of "relevant evidence."

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Utah Rules of Evidence, Rule 402. Relevant evidence generally admissible; irrelevant evidence inadmissible.

All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States or the Constitution of the state of Utah, statute, or by these rules, or by other rules applicable in courts of this state. Evidence which is not relevant is not admissible.

Utah Rules of Evidence, Rule 602. Lack of personal knowledge.

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This rule is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses.

Utah Rules of Evidence, Rule 605. Competency of judge as witness.

The judge presiding at the trial may not testify in that trial as a witness. No objection need be made in order to preserve the point.

UTAH RULES OF CRIMINAL PROCEDURE

Utah Rules of Criminal Procedure, Rule 4. Prosecution of public offenses.

(h) Words and phrases used are to be construed according to their usual meaning unless they are otherwise defined by law or have acquired a legal meaning.

FINAL ORDER

4TH DISTRICT COURT - SP FORK
UTAH COUNTY, STATE OF UTAH

OREM CITY, : MINUTES
Plaintiff, : BENCH TRIAL
: SENTENCE, JUDGMENT, COMMITMENT
:
vs. : Case No: 105209941 TC
SCOTT RAY BISHOP, : Judge: DONALD J. EYRE
Defendant. : Date: October 26, 2010

PRESENT

Clerk: emilyp
Prosecutor: D J SUMMERS
Defendant
Defendant pro se

DEFENDANT INFORMATION

Date of birth: April 9, 1970

Audio

Tape Number: RM1 Tape Count: 11:04:04

CHARGES

1. SPEEDING - Infraction

Plea: Not Guilty - Disposition: 10/26/2010 Guilty

HEARING

TAPE: RM1 COUNT: 11:04:04

Officer Rich is sworn in and questioned by both parties. Both parties present their closing arguments. The Court finds the Defendant guilty, and imposes a \$90.00 fine. The Court orders the posed bail be forfeited to the fine. Case closed.

SPEEDING IN

SENTENCE FINE

Charge # 1 Applied to Fine

Total Fine: \$44.04

Total Suspended: \$0

Total Surcharge: \$45.96

Total Principal Due: \$90.00

Plus Interest

Pay fine to The Court.

Case No: 105209941 Date: Oct 26, 2010

Date: Oct. 26, 2010

15/ DONALD J. EYRE
DONALD J. EYRE AB
District Court Judge

I CERTIFY THAT THIS IS A TRUE COPY OF
AN ORIGINAL DOCUMENT ON FILE IN THE
FOURTH JUDICIAL DISTRICT COURT, IN
COUNTY, STATE OF UTAH.

DATE: A. Bre...

12-13-10

DEPUTY COURT CLERK

